

IN RE: PETITION FOR SPECIAL HEARING
S/S Edmondson Avenue, 100' W
of the c/l of August Avenue
(805 Edmondson Avenue)
1st Election District - 1st Councilmanic District
Earle Crane, et ux
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 94-24-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing filed by the owners of the subject property, Earle and Connie Crane. The Petitioners request approval of the three apartments existing on the subject property as a legal nonconforming use, in accordance with Petitioner's Exhibit 1.

Appearing on behalf of the Petition were Earle and Connie Crane, property owners. Also appearing on behalf of the Petitioners was Nicholas Commadari, a zoning consultant. There were no Protestants present at the hearing; however, it should be noted that the Petitioners were advised to file the instant Petition as a result of a complaint registered with the Zoning Administration and Development Management Office as to the use of the property as three apartments.

Testimony indicated that the subject property, known as 805 Edmondson Avenue, consists of .25 acres, zoned D.R. 5.5, and is improved with a two-story dwelling containing three apartments. The Petitioners also own the adjoining property at 803 Edmondson Avenue, which was the subject of companion Case No. 94-23-SPH, in which a nonconforming use of that property as three apartments was granted on August 19, 1993. Testimony in that case revealed that the dwelling on that property was built as a three-apartment dwelling in 1938, well before the effective date of the

zoning regulations. In the instant case, the Petitioners testified that they have owned the subject property since 1952 and that they have used the dwelling as a three apartment dwelling unit continuously and without interruption since that time. In support of their request, the Petitioners introduced a letter from Elizabeth E. DelMero, marked Petitioner's Exhibit 2, which indicates that she resided on the property from 1952-1953 at which time the property was used as a three-apartment dwelling. Further testimony revealed that the subject property was zoned "A" Residence from 1945 to 1955 which permitted two apartments within the dwelling as of right. However, the Petitioners presented no testimony or evidence to support that the subject dwelling was used as three apartments prior to their purchase of the property in 1952, and particularly, prior to the effective date of the zoning regulations which permitted two apartments.

As with all nonconforming use cases, the first task is to determine whether a lawful nonconforming use existed on the subject property prior to the year in which a change in the zoning regulations caused the use of the property to become illegal. The controlling year in this case is 1945, the year in which the zoning regulations were established.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use, and therefore, breaks the continued nature of the nonconforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered nonconforming. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A2d. 96 (1978).

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When the claimed nonconforming use has changed, or expanded, then the Zoning Commissioner must determine whether or not the current use represents a permissible intensification of the original use or an actual change from the prior legal use. In order to decide whether or not the current activity is within the scope of the nonconforming use, the Zoning Commissioner should consider the following factors:

"(a) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;

(b) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind;

(c) Does the current use have a substantially different effect upon the neighborhood;

(d) Is the current use a "drastic enlargement or extension" of the original nonconforming use."

McKemy v. Baltimore County, Md., Supra.

After due consideration of the testimony and evidence presented, it is clear that the subject property has been used continuously and without interruption as three apartments since 1952. However, the Petitioners were unable to produce sufficient testimony and evidence to support the use of this property as three apartments prior to that date. Further, as previously stated, the property's zoning classification only permitted two apartments as of right between 1945 and 1955. Therefore, a legal nonconforming use can only be granted for two apartments.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the Petition for Special Hearing shall be denied in part and granted in part.

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THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 17th day of September, 1993 that the Petition for Special Hearing to approve the three apartments existing on the subject property as a legal nonconforming use, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the use of the subject property as two apartments be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted shall be rescinded.
- 2) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

TMK:bjs

Timothy M. Kotroco
TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING
Date 9/17/93
By TMK

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By TMK

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Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

September 17, 1993

(410) 887-4386

Mr. & Mrs. Earle Crane
1150 Underwood Road
Sykesville, Maryland 21784

RE: PETITION FOR SPECIAL HEARING
S/S Edmondson Avenue, 100' +/- W of the c/l of August Avenue
(805 Edmondson Avenue)
1st Election District - 1st Councilmanic District
Earle Crane, et ux - Petitioners
Case No. 94-24-SPH

Dear Mr. & Mrs. Crane:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been denied in part and granted in part in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

Timothy M. Kotroco
TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. Nicholas Commadari
3410 Woodstock Avenue, Baltimore, Md. 21213

People's Counsel

File



Petition for Special Hearing
94-24-SPH
to the Zoning Commissioner of Baltimore County

for the property located at 805 Edmondson Ave
which is presently zoned D.R. 5.5

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

the existing 3 apartments
on the subject property as a legal nonconforming use.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser/Lessor:

Earle + Connie Crane
Earle + Connie Crane
1150 Underwood Rd
Sykesville Md 21784

Attorney for Petitioner:

Nicholas Commadari
Nicholas Commadari
3410 Woodstock Ave 21213 235-6811

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s):

Earle Crane
Earle Crane
Connie Crane
Connie Crane

805 Edmondson Ave 94-24-SPH
Catonsville Md 21223

Nicholas Commadari
Nicholas Commadari
3410 Woodstock Ave 21213 235-6811

OFFICE USE ONLY
RECEIVED BY: DATE

ORDER RECEIVED FOR FILING
Date 9/17/93
By TMK

DESCRIPTION

Located on the south side of Edmondson Avenue (abutting a service drive) approximately 100' west of August Avenue and known as lots 32A, 32B and 33A as shown on the Plat of Homewood, which plat is recorded in the land records of Baltimore County in book 8 page 56. Also known as 805 Edmondson Avenue and containing approximately 11,250 square feet.

94-24-SPH

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 1st Date of Posting 7/25/93
Posted for: Special Hearing
Petitioner: Earle + Connie Crane
Location of property: 805 Edmondson Ave, 100' +/- W of August Ave
Location of sign: Front 705 July 22, 1993 - Property of Earle + Connie Crane
Remarks:
Posted by: TMK Date of return: 7/30/93
Number of signs: 1

CERTIFICATE OF PUBLICATION

TOWSON, MD. July 29, 1993

THIS IS TO CERTIFY, that the aforesaid advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on July 29, 1993

THE JEFFERSONIAN,
A. Henrichson
LEGAL AD. - TOWSON
PUBLISHER

15-16-17

Item # 25 receipt

Baltimore County
Zoning Administration &
Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Date 7-14-93

Account: R-001-6150

Number JCM

Connie CRANE - 805 EDMONDSON Ave.

SPH (040) 250.00

Posing (02) 35.00

285.00

03A03M0284M1CHRC \$285.00

Please Make Checks Payable To: Baltimore County 7-14-93

Cashier Validation

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

JUL 27 1993

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 94-24-SPH (Item 25)
805 Edmondson Avenue
S/S Edmondson Avenue, 100' +/- W of c/l August Avenue
1st Election District - 1st Councilmanic
Petitioner(s): Earle Crane and Connie Crane
HEARING: WEDNESDAY, AUGUST 18, 1993 at 2:00 p.m. in Rm. 118, Old Courthouse.

Special Hearing to approve the existing three apartments as a legal nonconforming use.

Bel Jan

Arnold Jablon
Director

cc: Earle and Connie Crane
Nicholas Commodori

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

August 9, 1993

Mr. and Mrs. Earle Crane, et al
805 Edmondson Avenue
Catonsville, Maryland 21228

RE: Case No. 94-24-SPH, Item No. 25
Petitioner: Earle Crane, et al
Petition for Special Hearing

Dear Mr. and Mrs. Crane:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on July 14, 1993 and a hearing was scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

To: Anne LeJoliffe, Director
Zoning Administration and Development Management

FROM: Robert W. Barling, Senior Engineer
Development Plan Review

RE: Zoning Advisory Committee Meeting
For August 11, 1993
Item No. 25

The Development Plan Review Section has reviewed the subject zoning item. We recommend that additional engineering support be provided.

Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

7-22-93

Re: Baltimore County
Item No: 7-22 (JCM)

Ms. Helene Kehring
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Dear Ms. Kehring:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration projects.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

John Contestabile, Chief
Engineering Access Permits
Division

My telephone number is _____

Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21205-0717

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration and
Development Management

DATE: July 29, 1993

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Petitions from Zoning Advisory Committee

The Office of Planning and Zoning has no comments on the following petition(s):
Item Nos. 9, 11, 12, 18, 19, 21, 24, 25, 26, 29, 32, 33, 34, 37 and 39.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

Prepared by: Jeffrey M. Long

Division Chief: Gary Likens

PK/JL:lw

'ZAC. 9/ZAC1

